**CHE MALKELTHOM AWANG BESAR & ANOR.**

**v.**

**MOHAMAD & ANOR.**

HIGH COURT MALAYA, KOTA BHARU
EUSOFF CHIN J
[CIVIL SUIT NO. 54/81]
29 MARCH 1983

***TORT:*** *Negligence - Motor accident - Liability - Contributory negligence.*

The action was for general and special damages and was brought by the plaintiffs as administrators of the estate of Mat Jali bin Awang. Jali was driving his motor cycle, with his brother riding pillion, when they were involved in an accident with a motor lorry driven by the 1st defendant (and owned by the 2nd defendant). Jali died in the accident. The plaintiffs claimed that the 1st defendant caused the accident by overtaking the motor cycle and knocking into it, while the 1st defendant claimed that it was the motor cycle that had attempted to overtake his lorry, had struck it and fallen on the road.

**Held:**

**[1]** There was no negligence on the part of the 1st defendant. The version given by the 1st defendant was more probable. It was substantiated by the sketch plan and the police report.

**[2]** Neither was there any contributory negligence on the part of the 1st defendant.

*[Action dismissed.]*

*For the plaintiffs - M.S. Nayagam*
*For the defendants - S.P. Veloo*

**JUDGMENT**

**Eusoff Chin J:**

This action for general and special damages is brought by the plaintiffs as administrators of the estate of Mat Jali bin Awang. The plaintiffs' case is as follows:

On 22 July 1978 at about 4.30 p.m., Mat Junoh bin Awang (PW1) was riding as pillion on motor cycle No. AAB 1315 driven by his brother Mat Jali bin Awang (deceased). They were riding along the main road from Pasir Puteh to go to Bukit Jawa. The road was straight and dry, and Mat Junoh said he could see about one mile of the road ahead of him. They were going at a moderate speed. A motor lorry came from behind and wanted to overtake the motorcycle. At that time a lorry with trailer coming from the opposite direction, was about 40 yards ahead. The lorry at the rear of the motor cycle overtook the motor cycle ridden by PW1. The motor cycle was about two feet from the left edge of the road. While the lorry was overtaking the motor cycle, it moved to the left, and the near side middle portion of the lorry struck the motor cycle. PW1 and the deceased fell to the road. The deceased died in the accident. PW1 sustained injuries.

The first defendant, Wan Mohamad bin Yaacob (DW1) said that he was driving motor lorry DB 2590, on 22 July 1978 at about 4 p.m. from the direction of Pasir Puteh going towards Kota Bahru to go to Kok Lanas. He was going at about 25 m.p.h. He looked into the rear-view mirror of the lorry and saw a motor vespa about to overtake his lorry. He saw a lorry with trailer coming from the opposite direction. He gave hand and light signal to the

motor vespa not to overtake him. The rider of the motor vespa did not heed the signals and proceeded to overtake the lorry. As the oncoming lorry was passing DW1's lorry, he felt as if something had hit his motor lorry, but he did not hear any sound. He stopped his lorry on the road. He came down and examined his lorry. He found that the rear off-side signal light of his lorry was broken. He looked back,and saw the motor vespa had fallen on the road. He then went to Pasir Puteh police station and lodged a report.

From p. 7 of the Agreed Bundle of Documents filed by plaintiffs, I find that the 2nd defendant is the owner of the motor lorry DB. 2590.

After hearing PW1 and DW1's evidence and submissions of Counsels for plaintiffs and defendants I dismissed the action with costs. I believe that the version given by DW1 is more probable than the one given by PW1. If as PW1 had stated that the lorry at the time of overtaking the motorcycle had swerved to its left, and its middle near side portion had struck the motor cycle, the motorcycle would have been pushed to the left and since the motor cycle was also moving at that time, it would have fallen not directly on the road, but somewhere on the left side of the road. But the sketch plan (and keys to it) at pp. 3 to 5 of AB1, shows that the motor cycle fell on the road, about 2 feet 2 ins. from the left edge of the road. DW1's version that the motor cycle while trying to overtake the lorry had struck DW1's lorry and fallen down on the road, is substantiated by the broken rear off side signal light, and the police report, (which also mention this broken signal light) which was lodged immediately after the accident.

I also found no contributory negligence on the part of DW1 since DW1 had given the proper signals for the motor cycle rider not to overtake his lorry at that time.

Also found at [1983] 2 CLJ 259